

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

AGUDATH ISRAEL OF AMERICA, AGUDATH ISRAEL OF  
KEW GARDEN HILLS, AGUDATH ISRAEL OF MADISON,  
AGUDATH ISRAEL OF BAYSWATER, RABBI YISROEL  
REISMAN, RABBI MENACHEM FEIFER, and STEVEN  
SAPHIRSTEIN,

Plaintiffs,

vs

GOVERNOR ANDREW CUOMO

Defendant.

Civil Action No. 1:20-cv-04834

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**AFFIDAVIT OF RABBI YISROEL REISMAN**

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1. I am a Plaintiff in this action, and I serve as the Rabbi of Agudath Israel of Madison, which is also a Plaintiff in this lawsuit.

**Our Synagogue**

2. Agudath Israel of Madison is a synagogue that was founded in 1989. I have been its Rabbi since its inception. Our synagogue serves more than 300 men and women each week. Our primary activities are worship services, which are conducted every day. The services on Saturdays and on Jewish holidays are particularly important. Our main sanctuary has a legal capacity of 186, and our lower and upper levels each have capacities of more than 145.

3. Our synagogue has been fully compliant with all mandates issued by New York State and New York City since the onset of the pandemic. We suspended services in mid-March,

and remained closed until permission was granted to resume services around Memorial Day. Since then, we have at all times operated in conformity with all health requirements. We are pleased that we have not had a congregant with COVID for many, many months.

4. We have added services to comply with the restrictions on capacity. To provide the most recent example, we are currently in the middle of the holiday of Succos. In normal times, we would have a single holiday service at 8:30am. In light of the pandemic, however, we had services at 7:15, 8:30 and 9:15, and the 8:30 service also used the courtyard that abuts our main sanctuary. Every congregant wears a mask, at every service.

#### **The Governor's New Executive Order**

5. The recently enacted executive order makes it impossible for my synagogue and congregants to fulfill both their religious obligations and their limitations of the new Order.

6. For synagogues in the "red zone," as mine is, worship services are limited to 10 people. For the Jewish holidays that we will observe this Friday, Saturday and Sunday, it is practically impossible to conduct services for all of our congregants.

7. This Friday, October 9, is the holiday of Hoshana Rabbah. It marks the conclusion of the Days of Judgment that began with Rosh Hashona. There are special, additional services and ritual that are required that day. In particular, there are seven additional prayers followed by the traditional beating of a willow branch in the synagogue. This tradition dates back two thousand years, to the times of the Temple. Services also require reading from a Torah scroll.

8. Hoshana Rabbah services take at least ninety to one hundred and twenty minutes. It is a practical impossibility to have services for my congregants on Hoshanna Rabba in groups limited to ten. Even if only two hundred people came to services, that would require twenty different services, each lasting at least ninety to one hundred twenty minutes, on Friday morning.

9. By contrast, under the existing rules, we could utilize all the various spaces of our synagogue to have four or five services, using indoor and outdoor space.

10. This Saturday, October 10, is the holiday of Shmini Atzeres. Among the special features of the holiday is the Yizkor service, which is the Prayer for Departed Relatives. This prayer is only recited four times a year. The next recitation is not until Passover, in April. These additional prayers by men and woman alike are particularly emotional, are led by the Rabbi, take an additional fifteen minutes and are only offered in group (rather than individual) prayer. It would be particularly devastating for congregants to be deprived of this prayer on Saturday. Yet under the Governor's order, it is impossible for them to do so.

11. Shmini Atzeres is also the only day of the year when we read Ecclesiastes, which Orthodox Jews accept as the Book of Wisdom. In my and many other synagogues, it is read from a parchment and requires a trained cantor. Again, it is impossible to comply with both the Jewish law requirements to read Ecclesiastes in a congregate setting and the Governor's new Order. We should not be forced to choose which mandate to follow. That is especially so when the existing capacity restrictions work and have been implemented.

12. The next day, Sunday October 11, is Simchas Torah. Its literal translation is the Joy of the Torah. In celebration of the completion of the annual cycle of Torah readings, each congregant is called to the Torah for a short reading. The Rabbi is then traditionally called to read the final portion of the Torah, after which the first portion of the Torah is read. These Torah readings, in addition to the regular services, take time.

13. Again, it is impossible to conduct services for all of our congregants on Simchas Torah if we are limited to ten worshippers. There simply is not enough time to do even the Torah readings required of the day, let alone the services.

14. By contrast, we would be able to comply with both our religious and civil dictates if the existing capacity restrictions remain in place through this holiday period.

**The Disproportionate Impact of the Executive Order on Orthodox Worship Services**

15. In addition to being targeted at Orthodox Jews the Order essentially only truly limits Orthodox worship services. Here is why:

16. This Order covers limited geographic areas. There are no restrictions in adjacent areas. Thus, the Orthodox Jew in a red zone can continue to shop at the supermarket ten minutes away that he regularly drives to and can continue to go to the office in downtown Brooklyn or Manhattan that she regularly commutes to. But since Orthodox Jews are prohibited from vehicular travel on Saturdays and Holidays, they worship in synagogues close to their homes that they can walk to. For that reason, Orthodox synagogues are clustered in the residential neighborhoods of their congregants. The effect of this is that the only activity of my congregants that the Order makes impossible is their worship on the upcoming holidays.

17. For the same reasons, it is only Orthodox Jews who will experience the full effects of this Order. There is no doubt that other religious worshippers and ministers fall into these zones as well. But the worshipper and officiant who attends Friday services at their mosque at least retains the option to travel to a nearby mosque for services. Similarly, the Catholic parishioner and priest whose Sunday Church service is impacted can travel to Church in an adjacent community. It is only the Orthodox Jewish worshipper who is totally deprived of the ability to participate in services.

18. To be clear, the foregoing is not meant to diminish or justify the impact on our co-religionists. The Order unfairly, unnecessarily and unconstitutionally restricts their Free Exercise of Religion. We merely note the disproportionate effect the Order has on Orthodox Jews.

19. One real world consequence of these new restrictions will be felt by two young orphans who worship in my synagogue. The Yizkor prayers are particularly important to them. Yet these new restrictions make it impossible for them to participate, since they would be unable to gather with the 10 adult men required for this prayer.

**Conclusion**

20. Those of us challenging the Governor's Order do so reluctantly, and only as a last resort to protect the ability of ourselves and our congregants to comply with Jewish law. We are a coalition of the complaint: our synagogues have followed all closure, capacity limitation, social distancing and masking requirements. The Governor has publicly conceded that there has been no enforcement of those requirements against those who have not voluntarily complied. But that is punishment, not public health. Let there be strict enforcement of the existing rules – that work and allow safety and services to coexist – before imposing punitive and draconian new rules that bring those into conflict.

Executed this 8<sup>th</sup> day of October 2020, at Brooklyn, New York.

  
YISROEL REISMAN